IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1181 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GULAMBHAI ADAMBHAI PATEL

Versus

NAGAR PRADHAMIK SHIKSHAN SAMITI

Appearance:

1. Special Civil Application No. 1181 of 1992

NOTICE SERVED for Petitioner No. 1

MS MAITHILI D MEHTA for MR SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 26/06/2003

ORAL JUDGEMENT

This petition is originally filed by learned Advocate Mr.A.D.Padival. Upon his death, this Court

issued notice to the petitioner to file appearance on his behalf. The said notice was served to the petitioner on 19th July 1997. However, no appearance is filed and the matter rests as it is.

2. Today, when the matter is called out, the petitioner is not present. As this matter is hanging since 1992, I am deciding the same on the averments made in the petition and the reply affidavit filed on behalf of the respondent.

3. The petitioner, in this petition has prayed to direct the respondent to pay forthwith the interest at the market rate on the amount of terminal benefits of Rs.9662.97 ps. which has been paid to the petitioner after a belated period of 14 years from the date of self-discharge in the year 1978 and to direct the respondent to pay an amount of Rs.840.10 ps. which has been withheld by the respondent from the above payment, which according to the petitioner is otherwise entitled being the amount of leave pay.

4. From the averments made in the petition, it is the case of the petitioner that he was appointed as a Watchman by the respondent on 29.8.1961 on a permanent post. According to the petitioner, he has continuously worked under the respondent for 17 years. He applied for leave from 8.11.1978 to 7.3.1979. According to the petitioner, the respondent, by letter dated 19.2.1979, discharged the petitioner from service with effect from 8.7.78. The said order was challenged by the petitioner in a petition, being Special Civil Application No. 1555 of 1987. This Court, vide its order dated 8.7.1987, disposed of the said petition by directing the petitioner to make a representation and the respondent was directed to consider the same and dispose of on merits sympathetically as early as possible, preferably within three months from the date of receipt of the representation. Thereafter, the petitioner made representations and the respondent, by its order dated 30.1.1988 confirmed the earlier order of self-discharge of the petitioner by rejecting all the representations. The petitioner challenged the said order by filing a petition, being Special Civil Application No. 2234 of 1988 praying that the order dated 30.1.1988 and the earlier order dated 19.2.1979. In the said petition, the petitioner also prayed for the benefits like Provident Fund, Gratuity etc. as may be admissible in accordance with law. This Court, vide order dated 24.11.1988 did not interfere with the order of discharge passed against the petitioner. However, with regard to the non-payment

of his terminal benefits, this Court directed the petitioner to make appropriate representation and further directed the respondent to decide the question as to whether the petitioner is entitled for the terminal benefits or not. The petitioner carried the said order by way of filing appeal being Letters Patent Appeal No. 213 of 1988 which was also rejected on 20th August 1992. The petitioner approached the Supreme Court by filing Special Leave Petition being Special Leave to Appeal (C) No. 13421 of 1991. The Apex Court, by order dated 15.7.1991, rejected the said SLP.

The respondent, on 18.10.1991, paid Rs.4461.37 ps. towards payment of Provident Fund and Rs.4361.50 ps. towards Gratuity amount, in all, Rs.8822.87 ps. According to the petitioner, he was entitled to terminal benefits of the aforesaid amount when he was discharged on 8.7.1978 and that there was no stay whatsoever from any authority for non-payment of the same to petitioner. Thus, the delay in payment of almost 14 years by the respondent of the terminal benefits of an amount of Rs.8822.87 ps. and withholding an amount of Rs.840.10 ps. towards various dues which comes to Rs.9662.97 ps. is totally arbitrary and therefore, the respondent is dutybound to pay on the said amount reasonable rate of interest.

The Administrative Officer, Municipal School Board, Ahmedabad Municipal Corporation has filed a reply affidavit dated 11th August 1992. It paragraphs 2.1 and 2.2, the respondent has replied as under:

"2.1 I say that with effect from 8th July 1978 till 7th March 1979 the petitioner had applied for leave, which was not granted. The reasons given for the leave were self-same. He was served with notice for remaining unauthorisedly absent. The petitioner did not show cause. Therefore, the services of the petitioner came to be discharged with effect from 8th July 1978. The petitioner was also informed by letter dated 20th February 1979 at his address which was registered with the office as well as at the school address. The information received is that the petitioner had gone abroad. Thereafter the petitioner never made any inquiry in the office regarding his retiral benefits. There has been, therefore, no delay on the part of the respondent in making payment. The payment has been made subsequent to the representation made pursuant to the directions given by this Hon'ble Court. The

petitioner was indebted in the sum of Rs.840.10. The same has been deducted from his retiral benefits. Since the petitioner never attended the school with effect from 8th July 1978, he was not entitled to salary, as he was a daily wager only. It is only subsequent to his coming from abroad that the petitioner has raked up and instituted further litigation. I therefore submit that all the retiral benefits that are due to the petitioner have been paid and nothing remains payable to him.

2.2 With reference to paras 2 to 15, it is denied that retiral benefits have been illegally withheld. The representation made by the petitioner was considered by the Municipal Commissioner on 4th April 1990, and the Municipal Commissioner rejected the said representation and the payment made to the petitioner, viz. Rs.4361.50 towards gratuity and Rs.3621.37 towards Provident Fund dues, is the only amount due and payable to the petitioner. Since the petitioner was not in India, petitioner is not entitled to any interest, as alleged. A sympathetic view has been taken. As such the petitioner is not entitled to any retiral benefits, he being a daily wager."

5. On perusing the above, it is clear that the services of the petitioner came to be discharged with effect from 8th July 1978. The petitioner was also informed by letter dated 20th February 1979. However, at that time, the petitioner had gone abroad. Since the petitioner did not make any inquiry in the office of the respondent regarding his retiral benefits and has claimed retiral benefits by way of representation, in pursuance of the order passed by this Court in the year 1990, the respondent immediately considered the representation on 4th April 1990 and made payments of Provident Fund as well as Gratuity. Therefore, there is no delay on the part of the respondent in making the payment of the terminal benefits to the petitioner. Likewise, the respondent is also justified in deducting the amount of Rs.840.10 ps. as the petitioner was indebted of the said amount from his retiral benefits. Similarly, the respondent is also justified in not paying the salary with effect from 8th July 1978 since the petitioner never attended the School with effect from that date and also on the ground that the petitioner was a daily wager only. In any case, I see no justification in granting the amount of interest to the petitioner, especially when the

petitioner was not in India. I see no merit in this petition and the same is rejected. Rule is discharged. No order as to costs.

(Kshitij R. Vyas, J.)
Sreeram.